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HEADLINE: Fight Over \$2 Fare Mooted in Appeal Filed by the MTA

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BODY:

The Metropolitan Transportation Authority won't bring the \$2 fare back down without a fight.

The agency filed a notice of appeal yesterday, announcing its determination to overturn the decision by state Supreme Court Justice Louis York that it had deceived the more than 7 million daily subway riders about its financial need for a fare hike.

"No one has contested the MTA's need to raise \$900 million from the fare box over the 2003-2004 period," said the chairman of the MTA, Peter Kalikow. "Putting our customers on an emotional roller coaster is just unfair. The fare increase will stay in effect unless the Appeals Court tells us to rescind it."

A decision may take several weeks. As a state agency, the MTA gets an automatic stay on Justice York's order to bring the fare back to \$1.50 by May 28. Lawyers for the Straphangers Campaign will attempt to lift the stay, most likely on Tuesday, said Thomas Shanahan, lead attorney for the Straphangers.

"I'm very confident the judgment will be upheld," Mr. Shanahan said.

Both sides agreed to request an expedited appeal today. Mr. Shanahan said he hoped to start submitting written briefs next week. Oral arguments might not begin for three or more weeks, he said.

If the stay on the fare hike rollback is not lifted, the appeal could extend past the May 28 deadline.

Mr. Shanahan said he will ask the court to order the MTA to place all fare hike revenue after that date, about \$1.2 million a day, into an escrow account, or that the MTA be required to post a bond to reimburse riders.

Some riders went to court yesterday to get back the extra money they gave the MTA since the fare hike took effect on May 4.

Judge York's decision rolled back fares on commuter rail lines, buses, and subways and halts the closing of 62 token booths, but made no provision for refunding money to riders.

Manhattan attorney Derek Smith filed a class-action suit in Supreme Court in Manhattan, with his secretary as the lead plaintiff, to recoup the lost money.

"All New Yorkers should be getting back the overpayment they made in the last two weeks," he said.

The New York Automobile Club, a branch of the Automobile Club of America, plans to ask a judge today to block toll increases of 25 and 50 cents that are scheduled to start Sunday, the club's spokesman Robert Sinclair said.

Judge York's decision did not affect toll increases, which under the jurisdiction of the Triborough Bridge and Tunnel Authority, not the MTA, he said.

Judge York invalidated the fare hike after finding that the legally required public hearings that led up to it were based on "false and misleading" information.

On flyers advertising the hearings the MTA stated a \$2.8 billion two-year deficit made fare increases necessary.

The Straphangers Campaign based its suit on the agency's financial data obtained by State Comptroller Alan Hevesi and City Comptroller William Thompson Jr.

Mr. Hevesi said the MTA hid more than \$500 million in surpluses to make its deficit appear worse this year. The MTA could have held off the fare hike until 2004, he and others argue.

While straphangers cross their fingers for the rollback to hold, Robert Bergen, a former general counsel to the MTA, said it's unlikely.

Mr. Bergen said he was surprised Judge York ordered a rollback.

"I would be even more surprised if it were upheld on appeal," Mr. Bergen said.

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